

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL WILLINGHAM,

No. C 11-01688 CW (PR)

Plaintiff,

ORDER DISMISSING SECOND AMENDED
COMPLAINT WITH LEAVE TO AMEND;
DIRECTING CLERK OF THE COURT TO
PROVIDE PLAINTIFF WITH A CIVIL
RIGHTS COMPLAINT FORM

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

In an Order filed September 12, 2011, the Court reviewed the first amended complaint (FAC) in the instant pro se civil rights action filed by Plaintiff, a state prisoner who has been granted leave to proceed in forma pauperis. The Court dismissed the FAC, finding that Plaintiff had failed adequately to link Defendants to identifiable injuries and had not articulated his claims clearly; that many of Plaintiff's claims appeared to be unrelated and Defendants improperly joined under Rules 18(a) and 20(a); and that his attempt to seek relief concerning the validity of his conviction cannot be pursued in a civil rights complaint.

The Court granted Plaintiff leave to file a second amended complaint (SAC) "in which (1) he clearly links each Defendant to the alleged injury or injuries for which that Defendant is alleged to be responsible, (2) does not raise unrelated claims against different Defendants, and (3) does not challenge the validity of his conviction." Order at 5:4-8.

Now pending before the Court is Plaintiff's SAC, in which he seeks monetary damages and injunctive relief based on (1) alleged injuries caused by employees of the San Francisco Sheriff's Department, Plaintiff's criminal attorney and members of the San

1 Francisco Public Defender's Office on unspecified dates between
2 2006 and 2010, when Plaintiff was incarcerated at the San Francisco
3 County Jail, and (2) alleged injuries caused by employees of San
4 Quentin State Prison (SQSP), where Plaintiff currently is
5 incarcerated.

6 As noted, in its Order dismissing the FAC with leave to amend
7 the Court explained to Plaintiff that he cannot proceed with a
8 complaint containing unrelated claims or misjoined defendants. In
9 the SAC, however, Plaintiff alleges two distinct sets of claims
10 against two distinct groups of Defendants, specifically, claims
11 against Defendants for events that transpired when Plaintiff was
12 incarcerated at the San Francisco County Jail between 2006 and
13 2010, and claims against SQSP employees for events that have
14 transpired since Plaintiff was transferred to SQSP in early 2011.

15 The Court finds these two sets of claims are unrelated and the
16 two groups of Defendants are improperly joined. Accordingly, the
17 claims against the SQSP Defendants are DISMISSED without prejudice
18 from this case. As Plaintiff recently filed a separate civil
19 rights case in this Court against SQSP Defendants, see Willingham
20 v. Pounce, C 11-05391 CW (PR), he may file an amended complaint in
21 that case to include the SQSP Defendants and the claims against
22 them that have been dismissed from this case.

23 Additionally, the remaining claims in this case, that is,
24 Plaintiff's claims concerning events that transpired at the San
25 Francisco County Jail between 2006 and 2010, cannot proceed as
26 plead because they are too conclusory and vague to put any
27 Defendant on notice of his or her alleged actions and the resulting
28 constitutional injury. In order to survive dismissal for failure
to state a claim upon which relief may be granted under Rule

1 12(b)(6), a complaint does not require detailed factual
2 allegations; the Supreme Court has made clear, however, that "a
3 plaintiff's obligation to provide the 'grounds of his
4 'entitle[ment] to relief' requires more than labels and
5 conclusions, and a formulaic recitation of the elements of a cause
6 of action will not do. . . . Factual allegations must be enough to
7 raise a right to relief above the speculative level." Bell
8 Atlantic Corp. v. Twombly, 550 U.S. 544, 553-56 (2007) (internal
9 citations omitted).

10 Here, Plaintiff's allegations concerning the events that
11 transpired when he was incarcerated at the San Francisco County
12 Jail do not adequately show that he is entitled to relief under 42
13 U.S.C. § 1983 because (1) he has not alleged the specific dates on
14 which the Defendants' actions caused him injury, other than to
15 state such actions occurred between 2006 and 2010, and (2) he has
16 not stated how such actions violated his constitutional rights.¹
17 Without such information, Plaintiff's allegations fail to state a
18 claim upon which relief may be granted under § 1983.

19 Because Plaintiff is proceeding pro se, the SAC is DISMISSED
20 with leave to amend, and Plaintiff is granted one more opportunity
21 to amend his complaint to state cognizable claims for relief
22 concerning the events that transpired when he was incarcerated at
23 the San Francisco County Jail.

24 //

25 //

26
27 ¹As the Court informed Plaintiff in its prior Order, in order to
28 state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
essential elements: (1) that a right secured by the Constitution or
laws of the United States was violated, and (2) that the alleged
violation was committed by a person acting under color of state law.
See West v. Atkins, 487 U.S. 42, 48 (1988).

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. All claims against the SQSP Defendants are DISMISSED without prejudice from this case. Plaintiff may within thirty (30) days from the date of this Order file an amended complaint in Willingham v. Pounce, C 11-05391 CW (PR), that includes those Defendants and claims.

2. Plaintiff's SAC is DISMISSED.

3. Within thirty (30) days from the date of this Order, Plaintiff may file a third amended complaint in order to cure the deficiencies noted above with respect to his claims concerning events that transpired when he was incarcerated at the San Francisco County Jail.

4. Plaintiff is advised that an amended complaint supersedes the original complaint. "[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint." London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981). Defendants not named in an amended complaint are no longer defendants. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).


Plaintiff shall use the court's civil rights complaint form, two copies of which are provided herewith, and include in the caption both the case number of this action, No. C 11-1688 CW (PR), and the heading "THIRD AMENDED COMPLAINT." If Plaintiff fails to timely file a third amended complaint in conformity with this Order, this case will be dismissed without prejudice and will be closed.

1 4. It is Plaintiff's responsibility to prosecute this case.
2 Plaintiff must keep the Court informed of any change of address and
3 must comply with the Court's orders in a timely fashion. Failure
4 to do so may result in the dismissal of this action, pursuant to
5 Federal Rule of Civil Procedure 41(b), for failure to prosecute.

6 5. The Clerk of the Court shall provide Plaintiff with two
7 blank civil rights complaint forms.

8 IT IS SO ORDERED.

9 Dated: 1/6/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE